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SUBJECT: TELECOMMUNICATION LIBERALIZATION MOVING AT A
SNAIL'S PACE

11. (SBU) Summary. ICT Officer met with Independent Communications Authority of South Africa (ICASA) officials to discuss implementation of the Electronic Communications Act (ECA). Market analysis, licensing, and spectrum management were identified as the main focus for implementation. ICASA experienced high management turnover after the promulgation of ECA, but the situation has since stabilized. Officials identified spectrum management as a concern that could hamper telecommunication liberalization. Officials noted that, despite additional licenses to satellite television service providers, the market was "not likely to become competitive any time soon". ICASA wants to increase competition in satellite broadcasting, but is also concerned about protecting public broadcasting. Although ICASA has made some strides in liberalizing the South African telecommunication market, market entry is still difficult for smaller service providers. End Summary.

ECA Implementation

12. (U) ICT Officer met with Independent Communications Authority of South Africa (ICASA) officials on February 4, 2008, to discuss the regulator's role in implementing the Electronic Communications Act (ECA) of 2005. Councilor Dr. Tracey Cohen described the ECA as heralding a new regulatory framework for liberalizing the telecommunication market in South Africa. Cohen stated that market analysis, licensing, and spectrum management were the three areas of focus for ICASA as it began implementing the ECA. According to Cohen ICASA took "a very EU-style, ex ante approach towards market regulations." This approach required ICASA to conduct market analysis after the ECA was passed. ICASA identified approximately "forty-one distinct communications markets in South Africa and decided that fourteen to fifteen of those markets would require regulatory attention" for ECA implementation.

13. (SBU) Licensing. Cohen stated that all telecommunication licenses are required to be converted under the new ECA regulatory regime. (Note: A service provider cannot broadcast in South Africa without a license.) ICASA Chair Paris Mashile emphasized that the agency is "working around the clock to meet tight deadlines for converting existing licenses". The statutory framework for ECA provided the agency with two years to complete this conversion process. Cohen noted that "a six-month extension is

built into this requirement and no sanctions will be applied if ICASA misses this deadline". Cohen expected the process to be completed by the end of 2008 at the latest. (Note: The statutory deadline called for the conversion process to be completed by June 2008.)

14. (SBU) Spectrum Management. ICASA officials noted that spectrum management is the area of greatest challenge for ICASA. The agency is looking for equitable ways to distribute remaining spectrum. ICASA discussed the possibility of creating a spectrum auction mechanism with the U.S. Federal Communications Commission (FCC) during consultations in Johannesburg in 2005. However, Cohen believed that South Africa "did not have a lot of appetite for an auction method". She commented that despite increases in the numbers of licenses under the new regime, "big licenses are still not available" in South Africa. The large national fixed-line and mobile operators such as "Telkom, Neotel, Vodacom, MTN, and Cell C had no problems in obtaining a converted license." Ono problems in obtaining a converted license." However, Cohen stated that smaller internet service providers (ISPs) and value-added service providers (VASPs) would have a tougher time. Approximately eighty of these ISPs/VASPs would like to obtain licenses, "but the spectrum capacity does not exist to provide more than one or two of them" with licenses.

ICASA Management Turnover

16. (SBU) ICASA experienced high management turnover

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after the promulgation of ECA. On the operations side, ICASA lost its entire executive management team in a year. (Note: Press reports indicate that some left as a result of interpersonal disputes with the new Chairperson and others because they thought the agency lacked independence.) Officials stated that all of the vacated posts have been filled. Dr. Cohen commented that most of the vacancies were filled from outside the agency and a few individuals were promoted internally. Therefore, she thought "the operational management team as a whole would need time to get up to speed". She believed that ICASA's concern with high management turnover is an issue of the past. Cohen noted that there were also discussions to reduce the size of the ICASA Council, its regulatory decision-making body. Currently nine Councilors are appointed by the South African President to serve four-year terms. She indicated that discussions are underway to reduce the number through attrition as the councilors' terms expired.

Areas for Improvement

17. (SBU) Cohen identified spectrum management as an issue that could hamper telecommunication liberalization. In her personal view, "South Africa should set-up a spot spectrum trading market to allow companies to exchange surplus capacity." However, she thought this approach was "too market-based" to be successful in South Africa. She noted that "Telkom had more spectrum allocation than it could ever hope to utilize." Other companies could benefit from access to this spectrum. According to Cohen, this is a "vestige of the monopoly status Telekom used to enjoy" under the old regulatory regime. Cohen expressed the view that Telkom would be approached to give up some of its surplus spectrum allocations. A

new policy to address spectrum management would take at least three to five months to develop. Cohen underscored the benefits of the 2005 FCC consultations for ICASA. She expressed a need for ICASA to invite the FCC to conduct a third workshop on spectrum management.

¶18. (U) In a statement dated January 30, 2008, Paris Mashile implied that conversion to digital broadcasting would increase the availability of spectrum in South Africa. He stated that the South African Government announced its intention to switch over to digital broadcasting on November 1, 2008, years ahead of the International Telecommunication Union (ITU) 2015 deadline. Mashile hoped that conversion to digital technologies would free up spectrum for a variety of uses such as e-government services.

Digital Broadcasting

¶19. (SBU) Cohen noted that despite approving additional licenses to satellite TV service providers, satellite broadcasting in South Africa was "not likely to become competitive any time soon". ICASA ran public hearings on digital broadcasting licenses as a part of the ECA implementation process. The hearings resulted in a recommendation to grant five new licenses. However, she noted that e.TV (the first privately owned but free-to-air television station in the country) decided not to pursue its satellite broadcasting license and that the remaining four recipients serve very "niche market segments such as Christian broadcasting". She added that Telkom Media, a subsidiary of Telkom, would like to enter the satellite television market since Telkom is "desperate to diversify". Nonetheless, QTelkom is "desperate to diversify". Nonetheless, MultiChoice has a strong hold on the market through its existing exclusivity rights. Multichoice has made statements in the press that "any attempt to undermine the principle of exclusivity would lead to less investment, lower quality, and less content."

¶10. (U) ICT officer inquired about the regulatory environment for foreign satellite operators. According to Cohen, South Africa has tried to "develop a regulatory framework for satellite operations for

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ten years now without much progress". Foreign satellite operators are required to establish a majority stake (51%) local presence or partner with a local company under the current regulatory environment. Cohen indicated that this was unlikely to change since the "current GATT framework only calls for a maximum of 49% foreign ownership" and "no country anywhere has the appetite for full ownership by foreign entities". However, she stated that this is a policy issue and any changes would have to be decided by the Department of Trade and Industry.

Controversy over Free-to-Air Broadcaster

¶11. (SBU) Responding to a question about the clash between ICASA and United Kingdom-based broadcaster Free2View, officials said Free2View does not have the authority to provide satellite signals without a South African license. (Note: Free2View launched a satellite service in January 2008 to provide free-to-air service requiring consumers to make a one-time satellite dish and decoder purchase). An ITU satellite operations memorandum of understanding

required satellite operators to obtain government approval before it "can have a footprint in a country". ICASA has threatened Free2View with a court interdiction if Free2View does not obtain a license or wait for ICASA to finalize its free-to-air broadcasting framework. (Note: ICASA is not expected to finalize a regulator framework for free-to-air broadcasting in the next year.)

¶12. (SBU) The Free2View case highlighted a dilemma facing ICASA. Cohen expressed the view that ICASA wants to increase competition in satellite broadcasting, but is also concerned about protecting public broadcasting. She hoped that free-to-air broadcasters would help increase competition without increasing costs to consumers. Cohen stated that there was an Interim Consent provision in the old regulatory regime that allowed free-to-air broadcasters to operate without licenses on a discretionary basis. The ECA did not include a similar consent provision. She added that in her personal view Free2View should be allowed to broadcast, but emphasized that she was in the minority among the councilors. She believed that ICASA would either refuse to approve Free2View's dish and decoder or seek a court interdiction. Cohen noted that the courts had established precedence for action against unlicensed broadcasters in a case involving another unlicensed free-to-air broadcaster that was illegally utilizing MutliChoice equipment to broadcast pornography.

¶13. (SBU) Comment. ICASA has made some strides in liberalizing the South African telecommunication market; however, lots of obstacles exist for further progress. Established entities such as Telkom and Multichoice secured market share under prior monopoly regimes, which makes it difficult for new entrants to offer competitive services. A number of smaller mobile service providers have entered the market, but most have yet to turn a profit. Additionally, ICASA has been slow in converting licenses and establishing regulatory frameworks for free-to-air broadcasting and satellite operations that would increase competition. The agency appears to be the need to increase competition with regulatory concerns. Scarcity of spectrum is an area of concern that will require creativity to manage. The agency could benefit from incorporating lessons learned from FCC's management of spectrum distribution. Hopefully, ICASA will have an opportunity to do this if and when they host the FCC for a third regulatory consultation. End Comment.

END TEXT

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